

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HC2, INC.,

Plaintiff,

1:20-cv-03178-LJL

-against-

AFFIRMATION OF
ROBERT ROTMAN, ESQ.

ANDREW DELANEY,

Defendant.

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Pursuant to the Court's Order dated November 30, 2020 (Dkt. No. 93), I, Robert Rotman, Esq., an attorney admitted to the practice of law before the courts of the State of New York, and not a party to the above-entitled cause, affirm the following to be true under penalty of perjury.

1. I am the attorney for defendant in the above-captioned litigation. I make this affirmation based on my personal knowledge and in support of defendant's first amended answer and counterclaims dated July 31, 2020 (the "Amended Counterclaims"). (Dkt. No. 74).

2. Attached are true and correct copies of certain documents referred to in paragraphs 36-38 of the Amended Counterclaims and in defendant's March 17, 2020 e-mail referred to in paragraph 14 of the Amended Counterclaims. (Dkt. No. 74).

3. Attached as Exhibit 1 is a true and correct copy of the "2019 Novel Coronavirus (2019-nCoV) FAQ for Businesses and Employers" issued by the New York City Department of Health on February 14, 2020. (Dkt. No. 74 paragraph 36). ("Encourage employees who are sick to stay home and seek medical care if needed."); ("Make sure your work policies are flexible and consistent with public health guidelines."); ("Separate employees who are sick. If staff arrive to work showing symptoms of respiratory illness, separate them from other staff members and send

them home.”; “Explore whether you can establish flexible work hours (staggered shifts) or work sites (work from home or telecommuting). This will allow physical distance among employees.”; “Share and discuss the outbreak response plan with your employees. Allow them to provide feedback and address any gaps in the plan.”) Exhibit 2 is a true and correct copy of the NYS Dept. of Health “Interim Guidance for Procedures When Identifying an Employee with Concerns for COVID-19 Exposures” dated March 11, 2020 (“If the employee also has symptoms associated with COVID-19, they should be instructed to also immediately call their healthcare provider for further guidance.”). The NYS Dept. of Labor FAQ’s have consistently stated that New York employers were required to follow DOH and CDC guidance. (“In addition to the following standards, both essential and non-essential businesses must continue to comply with the guidance and directives for maintaining clean and safe work environments issued by DOH.”). The DOL states: “No office-based work activities can operate without meeting the following minimum State standards, as well as applicable federal requirements, including but not limited to such minimum standards of the Americans with Disabilities Act (ADA), Centers for Disease Control and Prevention (CDC), Environmental Protection Agency (EPA), and United States Department of Labor’s Occupational Safety and Health Administration (OSHA). The State standards apply to all office-based work activities (essential and nonessential) in operation during the COVID-19 public health emergency until rescinded or amended by the State.” This guidance is not “optional”.

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/offices-interim-guidance.pdf>

4. Attached as Exhibit 3 is a true and correct copy of the Centers for Disease Control (“CDC”) “Interim Guidance for Business and Employers” dated March 2, 2020. (Dkt. No. 74 paragraph 37) (“Separate sick employees: CDC recommends that employees who appear to have

acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately.”; “Explore whether you can establish policies and practices, such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), to increase the physical distance among employees and between employees and others if state and local health authorities recommend the use of social distancing strategies. For employees who are able to telework, supervisors should encourage employees to telework instead of coming into the workplace until symptoms are completely resolved. Ensure that you have the information technology and infrastructure needed to support multiple employees who may be able to work from home.”; “Plan to minimize exposure between employees and also between employees and the public, if public health officials call for social distancing.”).

5. Attached as Exhibit 4 is a true and correct copy of Gov. Andrew Cuomo’s Executive Order No. 202 dated March 7, 2020 (Declaring a Disaster Emergency in the State of New York). (Dkt. No. 74 paragraph 38) (“I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster is impending in New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York.”).

6. Attached as Exhibit 5 is a true and correct copy of “Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Conference dated March 13, 2020.” (Dkt. No. 74 paragraph 14) (“To unleash the full power of the federal government in this effort, today I am officially declaring a national emergency.... We issued broad guidelines from CDC for every American... SECRETARY AZAR: Well, just general

preparedness. You know, you want to wash your hands. You want to keep distance from people. And if you're around someone sick, keep away from them. Just basic, basic public health.”).

7. I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 1, 2020

Respectfully submitted,

By:/s/Robert Rotman
Robert Rotman
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